



CENTER FOR FOOD SAFETY

April 21, 2022

Submitted via FOIAOnline

U.S. Environmental Protection Agency
Office of Pesticide Programs
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

FREEDOM OF INFORMATION ACT REQUEST

The Center for Food Safety (CFS) is a 501(c)(3) national nonprofit public interest and environmental advocacy organization working to protect human health and the environment through litigation, public education, and science-based advocacy. CFS works to maintain strong government regulations and policies related to pesticides and genetically engineered organisms. Consistent with this mission and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and EPA's FOIA regulations, 40 C.F.R. Part 2, CFS respectfully requests the following records:

1. **89668-EUP-1**: All records submitted to EPA regarding the release of male *Aedes albopictus* mosquitoes containing the microbial active ingredient *Wolbachia pipientis* ZAP strain in California, Florida, Kentucky, and New York from 2013 to 2016, including any annual monitoring reports submitted to EPA,¹ as required by Experimental Use Permit (EUP) No. 89668-EUP-1.
2. **88877-EUP-2**: All records submitted to EPA regarding the release of male *Aedes aegypti* WB1 Strain mosquitoes in California and Florida from 2015 to 2017, including any safety determinations,² annual monitoring reports, and/or final reports submitted to EPA at the conclusion of the experiments,³ as required by Experimental Use Permit No. 88877-EUP-2.

¹. [Issuance of 89668-EUP-1](#), 78 Fed. Reg. 56,227 (Sep. 12, 2013) ("Mosquito population and eggs will be monitored during the EUP in annual reports to EPA."); see also [Amendment & Extension of 89668-EUP-1](#), 79 Fed. Reg. 49,774 (Aug. 22, 2016) ("Mosquito population and eggs will be monitored over approximately 15,213 acres during the EUP and reported annually to Biopesticides and Pollution Prevention Division.").

² See [EUP Issuance for *Wolbachia pipientis*, wAlbB Strain in Male *Aedes aegypti* WB1 Strain Mosquitoes \(Including Egg, Larval, Pupal, and Adult Life Stages\) in California](#) (Oct. 15, 2015) ("You will immediately notify the EPA of any findings from the experimental uses that have a bearing on safety (i.e., the EPA requires reporting of any adverse effects from the use of or exposure to pesticides)."); see also [EUP Amendment & Extension for *Wolbachia pipientis*, wAlbB Strain in Male *Aedes aegypti* WB1 Strain Mosquitoes \(Including Egg, Larval, Pupal, and Adult Life Stages\) in California and Florida](#) (Aug. 30, 2016) (same).

³ *Id.* at 2 ("You must provide a final report at the conclusion of the experiment. This final report shall include all of the items set forth in 40 CFR § 172.8(b)(2). In addition, you must perform the following testing and monitoring and include the results of this testing and monitoring and other information . . . in the final report . . .").

3. **89668-EUP-3:** All records submitted to EPA regarding the release of male *Aedes aegypti* WB1 Strain mosquitoes in California, Florida, and Texas from 2017 to 2018, including any safety determinations,⁴ annual monitoring reports, and/or final reports submitted to EPA at the conclusion of the experiments,⁵ as required by Experimental Use Permit No. 89668-EUP-3.
4. **93167-EUP-2:** All records submitted to EPA regarding the release of OX5034 *Aedes aegypti* mosquitoes in Florida and Texas from 2020 to 2024, including any safety determinations,⁶ annual monitoring reports, and/or final reports submitted to EPA at the conclusion of the experiments,⁷ as required by Experimental Use Permit No. 93167-EUP-2.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), CFS requests that EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA has a strong presumption in favor of disclosure, and Congress enacted the fee waiver amendments to allow further disclosure to nonprofit, public interest organizations such as CFS. *See* 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has held that FOIA’s fee waiver should be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

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⁴ *See* EUP Amendment & Extension for *Wolbachia pipientis*, wAlbB Strain in Male *Aedes aegypti* WB1 Strain Mosquitoes (including Egg, Larval, Pupal, and Adult Life Stages) in California, Florida, and Texas (Jun. 22, 2017) (“You will immediately notify the EPA of any findings from the experimental uses that have a bearing on safety (i.e., the EPA requires reporting of any adverse effects from the use of or exposure to pesticides).”).

⁵ *Id.* at 2 (“You must provide a final report at the conclusion of the experiment. This final report shall include all of the items set forth in 40 CFR § 172.8(b)(2). In addition, you must perform the following testing and monitoring and include the results of this testing and monitoring and other information specified below in the final report . . .”).

⁶ [EUP Issued for 93167-EUP-2 to Allow for Releases of OX5034 *Aedes aegypti* in Florida and Texas](#) (April 30, 2020) (“You will immediately notify (within 24 hours) the EPA of any findings from the experimental uses that have a bearing on safety (i.e., the EPA requires reporting of any adverse effects from the use of or exposure to pesticides). This includes . . . any violation of the required 500 meter release distances from citrus orchards or municipal sewage treatment plants and detection of female mosquitoes containing the OX5034 genetic construct surviving to adulthood.”).

⁷ *Id.* at 2 (“You must provide a final report at the conclusion of the experiment. This final report shall include all of the items set forth in 40 CFR § 172.8(b)(2).”; *see also* [EUP Amended for 93167-EUP-2 to Allow Releases of OX5034 *Aedes aegypti* in Florida and California](#) (March 7, 2022) (“You must provide a final report at the conclusion of the experiment, as well as an annual monitoring report . . .”).

I. The requested disclosure is in the public interest because it will significantly contribute to the public's understanding of government operations and activities.

Here, disclosure of the requested information “contribute[s] significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

A. The disclosure directly concerns “the operations and activities of the government.”

The requested information pertains to EPA’s regulation of pesticides and genetically engineered organisms in accordance with its obligations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other federal laws. It is irrefutable that EPA’s regulatory oversight of genetically engineered mosquitoes is a clearly identifiable government operation. The requested disclosure will thus demonstrate to the public whether EPA is complying with its duties to regulate genetically engineered mosquito activities and shed a light into EPA’s decision-making process in determining to issue EUPs to applicants.

B. The disclosure will “contribute significantly to public understanding” of the government’s operations and activities.

As discussed in the previous section, disclosure will inform the public about EPA’s regulatory oversight of genetically engineered mosquitoes pursuant to the agency’s duties under FIFRA and other federal laws. The requested information is not available to the public. Thus, disclosure will significantly inform the public about EPA’s decision-making process, technical evaluations of environmental impacts, conclusions, and general knowledge regarding the use and issuance of EUPs for experimental release of genetically engineered mosquitoes.

CFS is a national nonprofit public interest and environmental advocacy organization that aims to empower people, support farmers, and protect the earth from the harmful impacts of industrial agriculture, which includes the experimental release of genetically engineered mosquitoes in California, Florida, Texas, and other states. CFS has over a million members across the country, including over tens of thousands of members in states approved for experimental releases, who are directly invested in this issue. CFS informs, educates, and counsels the public through a wide variety of communication and outreach tools, including legal action, presentations, advocacy campaigns, member emails, our online website, our True Food Network, books and reports, and our quarterly newsletter (Food Safety Now!) about the harmful impacts of industrial agriculture on human health, animal welfare, and the environment.

Through nearly two decades of involvement in science-based research, policy advocacy, and litigation relating to the environmental impacts of industrial food production, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS regularly puts out reports on genetically engineered foods, aquaculture, pesticides, food and feed additives, organic standards, and other food-related topics that involve highly technical concepts that may be difficult for the layperson to

understand without assistance or education from experts. CFS and its membership, along with the general public, are concerned about the safety and impacts of their food production on the environment, and specifically the threat of genetically engineered mosquitoes in California, Florida, and other states. Accordingly, CFS is an effective vehicle to disseminate information pertaining to EPA's regulatory oversight and issuance of EUPs for such activities.

II. CFS has no commercial interest in obtaining the requested information.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to reduce the harmful impacts of industrial food production on human health, animal welfare, and the environment through grassroots campaigns, public education, media outreach, policy advocacy, and litigation. Under FOIA, a "commercial interest" is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. See *e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10,017-18. Such interests are not present in this request.

In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request to achieve its goal of educating the general public about EPA's regulatory oversight and decision-making process in issuing EUPs for experimental release of genetically engineered mosquitoes. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA as a result of this request. Simultaneously, disclosure will help CFS fulfill its well-established goal of overseeing government operations and activities and ensuring that agencies are complying with their statutory duties to protect the public from the harmful impacts of industrial agriculture.

CONCLUSION

Based upon the foregoing, CFS requests that EPA waive any and all fees for this request and promptly send the requested information, as required by law. Under FOIA, EPA must respond to this request within twenty working days. 5 U.S.C. § 552(a)(6)(A). If EPA determines that any of the records requested are exempt from disclosure, the law requires the agency to notify us of that determination and reasons for its decision within that twenty-day period. *Id.* Once EPA has redacted exempt information, the agency must disclose any segregable, non-exempt information.

Please respond to this request by email. To the extent possible, please send electronic copies of the records requested to ksinclair@centerforfoodsafety.org. Thank you for your attention to this request.

Sincerely,

/s/ Kristina Sinclair

Kristina Sinclair
Associate Attorney